Supreme Court, U.S.
FILED
AUG 2 1984
ALEXANDER L. STEVAS
CLERK

NO. 84-40

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

LEO J. TALIKKA, Guardian of the Estate of WILLIAM THOMAS BALDAUF, aka WILLIAM T. BALDAUF,
Appellant,

-vs-

STATE OF OHIO, ex rel. DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION, SECTION OF REIMBURSEMENT SERVICES,
Appellee,

-vs-

CITIZENS SAVINGS AND LOAN COMPANY,
Appellee.

ON APPEAL FROM THE OHIO ELEVENTH APPELLATE DISTRICT COURT OF APPEALS, LAKE COUNTY, OHIO

APPELLEE STATE OF OHIO'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO AFFIRM LOWER COURT JUDGMENT

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QUESTION PRESENTED

Whether Section 5121.12 of the Ohio Revised Code violates the Fourteenth Amendment to the United States Constitution when it exempts from the obligation to reimburse the State for care and treatment at State hospitals for the mentally ill, convicted felons, misdemeanants, and persons under indictment, but imposes an obligation of reimbursement on insanity acquitees judicially committed.

PARTIES TO THE PROCEEDINGS

Pursuant to Rule 33.2(a)(4) of the Rules of the Supreme Court of the United States, the Appellee State of Ohio has taken the liberty to correctly caption the parties to the proceeding as indicated on the cover page. Appellant's Jurisdiction Statement erred in this regard.

Pursuant to Rule 15.1(b) of the Rules of the Supreme Court of the United States, the parties to the instant proceedings and those parties to the proceeding from which this appeal is taken, are fully listed in the caption on the cover page. However, the proper title of Appellee State of Ohio is as follows: State of Ohio, Department of Mental Health, Office of Reimbursement Services.

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STATEMENT OF THE CASE

Appellee State of Ohio agrees with and adopts Appellant's Statement of the Case with the following additions.

On January 25, 1984, Appellant filed a Notice of Appeal to the Supreme Court of Ohio in the Court of Appeals of Ohio,

Eleventh Appellate District. Memoranda in support and opposition to jurisdiction were filed by the parties. The Ohio Supreme Court sua sponte dismissed the appeal on April 18, 1984 for the reason that no substantial constitutional question was presented.

Appellant filed a Notice of Appeal to the United States Supreme Court on May 29, 1984 in the Ohio Court of Appeals, Eleventh Appellate District. Appellant's Jurisdictional Statement was served upon counsel for the Appellee State of Ohio on July 5, 1984. It is from this appeal that the Appellee timely moves for dismissal.

MOTION TO DISMISS

Now comes the Appellee, State of Ohio, Department of Mental Health, Office of Reimbursement Services, by and through their counsel of record and member of the Bar of this Court, and respectfully moves this Court for an Order dismissing the appeal pursuant to Rule 16.1(a), (b) of the Rules of the Supreme Court of the United States for the following reasons.

I. THE COURT SHOULD DISMISS THE APPEAL AS IMPROPERLY FILED AND NOT IN CONFORMITY WITH THE RULES OF THE SUPREME COURT OF THE UNITED STATES PURSUANT TO RULE 16.1.

On May 29, 1984, Appellant filed a Notice of Appeal to the Supreme Court of the United States in Ohio's intermediate appellate court, the Court of Appeals for the Eleventh Appellate District, Lake County, Ohio. Appellant's

Notice seeks relief from the December 27, 1983 final judgment of the intermediate Court of Appeals of the State of Ohio, the appeal from which the Ohio Supreme Court, Ohio's highest court of appeals, dismissed for lack of substantial constitutional question on April 18, 1984.

First, Appellee State of Ohio submits this Court is without jurisdiction to review the instant appeal since the May 29, 1984 Notice of Appeal was filed 189 days after the final judgment was rendered by the Ohio Court of Appeals on December 27, 1983. Rule 12.1 of the Rules of the Supreme Court of the United States and 28 U.S.C. Section 2101(c) require the "appeal be taken or applied for within ninety days after the entry of such judgment or decree." 28 U.S.C. Section 2101(c). The time for filing of the Notice of Appeal commences on the date of the judgment sought for review is rendered. Rule 11.3 of the Rules of the Supreme Court of the United States.

Appellee State of Ohio submits, therefore, the Clerk should have refused to receive Appellant's Jurisdictional Statement since the Notice of Appeal was untimely filed. See Rule 12.1 of the Rules of the Supreme Court of the United States.

Secondly, the Appellee State of Ohio urges dismissal of the appeal since Appellant filed the Notice of Appeal in the wrong court. Appellant should have appealed from the decision of the Ohio Supreme Court, dated April 27, 1984, which refused to review the matter. Had Appellant properly filed his Notice of Appeal to the United States Supreme Court from the Ohio Supreme Court, rather than the intermediate Court of Appeals, the appeal would be timely filed. However, since Appellant chose to appeal from the Ohio Court of Appeals, he is bound by the ninety day time restrictions imposed by 28 U.S.C. Section 2101(c) and Rule 12.1 of the Rules of the Supreme Court of the United States.

In conclusion, since Appellant untimely and improperly filed his Notice of Appeal and, thus, failed to conform to the requirements of the Rules of the Supreme Court of the United States, Appellee State of Ohio urges this honorable Court to dismiss the appeal for failure to conform to the requirements of 28 U.S.C. Section 2101(c) and Rules 16.1 and 33.7.

In the alternative, the Appellee respectfully urges affirmance of the lower court's decision for the reasons stated in the following Motion to Affirm.

MOTION TO AFFIRM

Now comes the Appellee, State of Ohio, by and through counsel of record, and respectfully moves, in the alternative, for an Order affirming the December 27, 1983 decision of the Ohio Court of Appeals for the Eleventh Appellate District and the April 27, 1984 Order of the Ohio Supreme Court as not posing a substantial federal question for this Court's review.

I. THE ASSESSMENT OF STATE INSTITUTIONAL SUPPORT CHARGES AGAINST INDIVIDUALS NOT UNDER INDICTMENT OR CONVICTION, IN CONNECTION WITH THEIR COMMITMENT TO STATE MENTAL HEALTH FACILITIES PURSUANT TO A FINDING OF NOT GUILTY BY REASON OF INSANITY, DOES NOT VIOLATE THEIR RIGHT TO EQUAL PROTECTION OF THE LAW, BECAUSE SUCH CLASSIFICATION WITH RESPECT TO THE ASSESSMENT OF SUCH CHARGES BEARS A RATIONAL RELATIONSHIP TO A LEGITIMATE LEGISLATIVE PURPOSE OR OBJECTIVE.

A. Appellant Does Not Present A Substantial Federal Question For This Court's Review.

Appellant does not appeal or dispute the finding of the courts below that his commitment to a State mental health institution after a criminal court finding of not guilty by reason of insanity is of the same nature and substance as a commitment in a civil proceeding. Nor does Appellant dispute the rational distinction between those in his "non-protected" class and those "protected" either under indictment for crime or transferred to State mental health institutions from correctional, penal, and reformatory institutions. Appellant's sole argument is that "[t]he legislative purpose of preservation of public funds is not served by granting a benefit to petty thiefs [sic], muggers, and embezzlers. . . ." Appellant's Jurisdictional Statement at 19.

Appellant's constitutional argument thus reduces to a claim that there exists a class,

exempted from liability for payment for their support, within which certain non-incarcerated convicts or convicted misdemeanants might receive benefit of free mental health services, were they to affirmatively assert their status as a defense to Appellee State of Ohio's routine charging of liability to its patients. Even assuming that such a situation might, on rare occasion, transpire, it is clear that:

> "In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality." Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78, 31 S.Ct. 337, 340, 55 L.Ed. 369."

Dandridge v. Williams, 397 U.S. 471, 485, cited with approval in Schweiker v. Wilson, 450 U.S. 221, 234 (1981).

Appellee State of Ohio does not acknowledge that Appellant's interpretation of the

subject statute is correct, and believes that Appellant's hypothetical inequities are groundless. But, assuming arguendo that such an interpretation is correct, the possibility that an extremely small group of convicted persons might be relieved of liability for a subsequent period of treatment in a state mental health institution, but that other persons (distinguishable from such sub-class only by their having been found instead to be not guilty by reason of insanity with regard to similar acts which they committed) are not so relieved of payment for such state charges, is not a question of such gravity as to call the State's support statute, Section 5121.12, Ohio Revised Code, into question under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

B. A Rational Distinction Exists Between The Subject Class In Furtherance Of Reasonable State Policies.

Those mentally ill persons exempted from payment for their support under Section 5121.12, Ohio Revised Code are: (1) those persons transferred from penal, correctional and reformatory institutions; (2) those persons under conviction for crimes; and, (3) those persons under indictment for crimes. Thus, all of such persons, in one way or another, are enmeshed in the criminal justice system concurrent with their commitment to state mental health facilities. Further, all persons exempted from payment for their support will be returned, upon determination of their competency to stand trial or of their restoration to sanity, to the jurisdiction and control of either (1) the penal, correctional or reformatory institutions; (2) a parole board or probation officer; or (3)

the indicting authority. On the other hand, those persons involuntarily civilly committed and those committed after a finding of not guilty by reason of insanity will routinely be released into the community upon restoration of their sanity.

The State policy related to this overall classification is not currently expressed on the face of the statute, nor does the State of Ohio maintain an official legislative history; however, a reasonable State policy of certain groups or classifications of patients connected with the criminal justice system is readily supportable. Appellant's "presumed legislative purpose of preservation of public funds" is but a general backdrop to the following additional reasons for the policy considerations. First, in the case of transferees from penal, correctional and reformatory institutions, the State has taken away the individual's ability to live in the community and earn a living. In exchange, the State

must arguably assume the burden of feeding, clothing and sheltering such individuals, and providing for their medical needs, one of which may be mental health care. Treatment of this group can also be viewed as part of a State policy to rehabilitate those under its custody, and as in furtherance of a policy to avoid the unnecessary danger and expense that would result from the intermixed confinement of prison inmates and mentally ill persons.

Secondly, a person who is sent to a state mental health facility between the time he is indicted for a crime and the time he is tried, is almost invariably committed to that facility because he is deemed not adequately competent to stand trial. The State has an interest in obtaining a swift, accurate determination of the mental capacity of such an individual under indictment, either to ascertain his competence to stand trial, or to establish his mental health capacity at the

time he committed actions which might be deemed criminal in nature. Even while being treated in the mental health facility, such a person is still under the continuing restraints of the criminal justice system and, upon being restored to competency, will be jailed, imprisoned, or otherwise restricted in his physical movements, unless released on bail or recognizance by that criminal justice system, until he is tried. A person under indictment logically should be viewed as a member of a sub-class of persons who are involuntarily, civilly committed persons who have no such criminal justice restraints upon their movements and who will be completely free to do as they wish upon being deemed adequately restored to competency and not in need of further institutionalization. As such, the commitment of a person under indictment is in furtherance of State administrative and investigative purposes to modify or forestall unnecessary criminal proceedings.

Thirdly, one who is convicted of a crime may, at the time of sentencing, or at any time thereafter, e.g., while on parole, require hospitalization for some mental illness or for observation in connection with his crime or as a condition of his parole or probation. Whether he is to be released upon restoration of sanity to a correctional, penal or reformatory institution, or to a parole board or probation officer, his commitment is an outgrowth of concommitant criminal proceedings or supervision. Again, his subclass of mentally ill persons under conviction is distinguishable from that larger distinct group of persons merely involuntarily civilly committed who are completely free to do as they wish upon being discharged from that mental health facility.

Appellant's argument that "convicted misdemeanants" might be given free treatment upon voluntary admission for a mental illness completely unrelated to the acts for which

they were convicted constitute not only an extremely small set of conceivable situations, but is at odds with the longstanding, standard interpretation of the charging statute, which exempts from payment for support only those persons institutionalized for treatment in state mental health facilities "under," or through conviction, not just any convict or misdemeanant at any time after conviction. See Section 5122.12, Ohio Revised Code.

Cases supporting the constitutionality of such classifications in similar statutes distinguishing liability include: Department of Mental Health v. Pauling, 47 Ill.2d 269, 265 N.E.2d 159 (1970); State ex rel. Dorothea Dix Hospital v. Davis, 292 N.C. 147, 232 S.E. 2d 698 (1977), and Fayle v. Stapley, 607 F.2d 858 (9th Cir. 1979).

In addition, there is at least one Ohio case which has held that the assessment of support charges against patients, involuntari-

ly civilly committed to state mental health hospitals, but not against persons committed to the same hospital while under either indictment or conviction, does not constitute a denial of equal protection to those persons in the former category or classification. See Fulk v. Moritz, Case No. C74-230 (N.D. Ohio 1981), cert. denied, 103 S.Ct. 1763 (1983), attached in the Appendix.

It is therefore plain that the State has established a reasonable classification of chargeable and non-chargeable patients in its mental health care facilities which are rationally related to the furtherance of legitimate state policies. Appellant has not presented any evidence or any argument of manifest inequity or injustice sufficient to challenge these classifications, and therefore the April 18, 1984 Order of Dismissal in Case No. 84-335 by the Supreme Court of Ohio sua sponte of the Appeal from the Court of Appeals for Lake County, Ohio, for the reason

that no substantial constitutional question exists herein, should now be affirmed.

CONCLUSION

For the foregoing reasons, the Appellee State of Ohio urges this Court to dismiss the Appeal for failure to conform to the requirements of 28 U.S.C. Section 2101 and the Rules governing this Court. In the alternative, the Appellee State of Ohio urges this Court to affirm the decision of the Ohio Supreme Court which found no substantial constitutional question and the judgment of the Ohio Court of Appeals upholding the constitutionality of Section 5121.12, Ohio Revised Code.

Respectfully submitted,

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COUNSEL OF RECORD FOR
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CERTIFICATE/PROOF OF MAILING

I, Deborah A. Piperni, a member of the Bar of the Supreme Court of the United States and an Assistant Attorney General for the State of Ohio, counsel of record for Appellee State of Ohio, Department of Mental Health, Office of Reimbursement Services, hereby certify that on this 31st day of July, 1984, I served three (3) copies of the foregoing Motion To Dismiss Or, In The Alternative, Motion To Affirm Lower Court Judgment on the counsel of record for the Appellant, Janice S. Evans, P.O. Box 920, Painesville, Ohio 44077, and Appellee Citizens Savings & Loan Co., William M. Elmore, Esq., at 614 Euclid Ave., Cleveland, Ohio 44114, by depositing such in the United States Post Office mail box in Columbus, Ohio with first class postage prepaid.

I further certify that all parties required to be served have been served.

DEBORAH A. PIPERNI
Assistant Attorney General

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SECTION 5121.12, OHIO REVISED CODE

Section 5121.12 Support and maintenance of patients.

The support and maintenance of patients confined in state hospitals for the mentally ill or in state institutions for the mentally retarded, excepting those transferred thereto from correctional, penal and reformatory institutions, and persons under indictment or conviction for crime, shall be collected and paid in accordance with this chapter.

HISTORY: GC § 1890-46; 117 v 550(565), § 46; 119 v 616(628); 120 v 309; 121 v 423 (434); became 5123.40 (Eff 10-1-53); 133 v H 688(Eff 11-21-69); became 5121.12, 138 v H 900. Eff 7-1-80.

Not analogous to former RC §5121.12 (GC § 1810; RS § 624; S&S 52, 53; 62 v 137; 63 v 96), repealed, 138 v H 900, eff 7-1-80.

The effective date of HB 900 is set by section 3 of the act.

Research Aids

Admission or commitment:
O-Jur2d: ins Per § 16
Am-Jur2d Welf L §§ 69-72

Support and maintenance of patients:
O-Jur2d: Hospit §§ 37, 38
Am-Jur2d: Welf L § 91

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U.S. DISTRICT COURT
NORTHERN DISTRICT
TOLEDO, OHIO

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

George R. Fulk, et al.,

Plaintiffs

vs.

Case No. C 74-230

Timothy B. Moritz, M.D., et al.,

Defendants

OPINION AND ORDER

YOUNG, J.:

This action was originally filed June 13, 1974, as a class action alleging certain violations of the civil rights of the plaintiffs by various state and federal officials. Under the laws then applicable, a three-judge court was required to reach the ultimate re olution of the issues in the case. Such a court was constituted, consisting of The Hon. George C. Edwards of the United States Court of Appeals for the Sixth Circuit, and District Judges Don J. Young and Nicholas J. Walinski of the Northern District of Ohio, Western Division.

Over the period of years that followed, discovery was conducted and various procedural matters were disposed of by order of Judge Young, the District Judge to whom the case was assigned. A conditional class certification was made, motions of the parties for summary judgment were filed and overruled, and various pretrial conferences were held.

Ultimately, it was stipulated by the parties that there were no issues of fact which depended for their resolution upon determining the credibility of witnesses, and that the case would be submitted to the Court upon transcripts of testimony, the exhibits approved by the parties, and written briefs. All this material has been filed and considered by the Court, and the case is ready for final disposition. This opinion will constitute the Court's findings of fact and conclusions of law.

The plaintiffs originally asserted five claims for relief as follows:

1. That the plaintiffs were deprived of their liberty by committment for rehabilitative treatment to institutions under control of the Ohio Department of Mental Health and Mental Retardation,[1] and were required to pay for their daily support and care while in the institution.[2] People incarcerated in state penal institutions under the

1. Title 51, O.R.C. §5122.47.
2. Title 51, O.R.C. §§5121.03, 04, 05 and 40.

In conformity with Rule 77(d) F.R.C.P. please take notice that the following order of judgment was entered in this Court on: September 28, 1981 James S. Gallas, Clerk

Ohio Department of Rehabilitation and Treatment[3] who are given rehabilitation treatment the same as that provided to the plaintiffs are not required to pay for their daily support and care while imprisoned. This is discriminatory toward the plaintiffs and denies them due process and the equal protection of the law;

II. That the state defendants, requiring the plaintiffs to pay for their care and support while committed, did not provide them with adequate and comprehensive psychiatric treatment in accordance with statutory standards, thus depriving them of due process of law;

III. That the federal defendants failed to provide the plaintiffs with procedural safeguards when designating representative payees for benefits to which plaintiffs are entitled under federal law,[4] thus depriving them of their property without due process of law;

IV. That the federal defendants in appointing representative payees for committed persons gave preference to state institutions over relatives of the plaintiffs, thus denying the plaintiffs the equal protection of the law;

V. That the federal defendants designating state institutional officials as representative payees resulted in the state officials being able to collect state support costs without proceeding through state legal processes in violation of the federal statutory provision[5] that exempts Social Security payments from execution, levy, attachment, garnishment or other legal process, therefore rendering the state defendants liable to the plaintiffs for the amounts received as representative payees and paid over to apply to plaintiffs' support obligations to the State of Ohio.

By stipulation of the parties, the plaintiffs' second claim for relief was dismissed without prejudice. Thus, there remain for consideration only four claims, two against the state defendants and two against the federal defendants.

I.

The Claims Against the State Defendants

Basically, the plaintiffs' first claim that it is unconstitutional, as a denial of due process and the equal protection of the law, for the State to charge for support and care to patients who are involuntarily committed to state mental treatment institutions by civil process when no such charges are made to patients who are committed by criminal process.

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3. Title 51, O.R.C. §5120.44.
4. 42 U.S.C. §405(j) and (l); 20 C.F.R. 404.1601-1610.
5. 42 U.S.C. §407.

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While most of the cases dealing with this problem deal with persons committed to mental institutions after acquittals of criminal charges by reason of insanity, or persons accused of crime discharged without indictment because of insanity, basically the commitment in such cases is no different from that of those persons committed by civil process. The rationale for such commitment is that the person needs confinement and treatment for the protection of himself and the public. As soon as his condition improves beyond the point when confinement is necessary, the patient is free to return to the community. There is thus a rational basis for the state making a differentiation between such persons and persons covicted of and imprisoned for crime in the matter of support payments. Persons imprisoned for crime may not return to the community until sentence has been served, even though their illness has been relieved.

Perhaps the best expression of this rationale is found in the opinion of the Supreme Court of New Hampshire in the case of In the Matter of Sargent, 116 N.H. 77, 354 A2d 404, 407:

> "There is a rational basis for distinguishing between persons in Sargent's position and prisoners who have been convicted, sent to prison and then transferred to the hospital. They are still prisoners even while at the hospital and when hospitalization is no longer necessary or desirable as to them they are not discharged but must return to the prison under their sentence. The legislature could logically conclude that such prisoners should be kept at the expense of the state when transferred to the hospital while those in Sargent's position should pay if able. The legislature is also entitled to find that it is more desirable and beneficial to be committed to the hospital than to prison. There is thus a rational basis for not charging those confined to the prison who by reason of insanity have not been indicted, are found not guilty or plead not guilty."

In addition to these considerations, there is a basic fallacy in the plaintiffs' assumption that persons sentenced to imprisonment upon conviction of crime cannot be, or are not, charged for their support and maintenance while so imprisoned.

Basically, many, if not most, of such prisoners pay for their support and maintenance by working at many routine tasks, such as cleaning, cooking, food service, maintenance, laundry, and various farming or industrial tasks for little or no wages. Beyond that, prisoners in work-release programs are required to pay for their board in the prison.[6]

Thus, long-standing laws and practices permit the state to require persons involuntarily confined to pay the cost of their support and care when they are financially able to do so. Certainly the state has strong reasons and a rational purpose in making such charges. For this reason also, the plaintiffs' first claim for relief must be denied.

The second of plaintiffs' remaining claims for relief is the claim that although all Social Security benefits are by statute[7] exempt from execution,

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6. Title 51 O.R.C. §5147.28(c)(1)
7. 42 U.S.C. §407

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levy, attachment, garnishment or other legal process, designating a state official as representative payee in effect is an attachment of the plaintiffs' benefits to pay the state's claims for support and care.

The most serious flaw in this argument is that whoever the designated payee of a social security beneficiary may be, the payee, like any other fiduciary, is required to disburse the payments he receives in accordance with law. It is hard to imagine that an individual designated payee would not be personally liable to the beneficiary for any wrongful expenditure of benefits received.

The regulations for the use of benefits by designated payees,[8] require that the benefits be used for the beneficiary's maintenance, including customary institutional charges when the beneficiary is confined in an institution. The regulations give maintenance and customary institutional charges the highest priority in the expenditure of benefit payments.

Thus, the state defendants, in applying plaintiffs' benefit payments made to them as designated beneficiaries, were not in effect attaching or garnishing the benefits, but simply doing what the federal regulations required them to do.

However, even if it be considered that the collection of the state support payments were improper, the plaintiffs' claim for repayment of the moneys encounters fundamental constitutional problems. The Eleventh Amendment to the Constitution of the United States bars the entering of judgment against a state. The plaintiffs here are seeking to recover moneys paid to the State of Ohio, even though that State is not named as a party.

The named state defendants are all officers or employees of the State, acting in their official capacities in doing what was done here. They are entitled to official immunity for their acts under the doctrine of Scheuer v. Rhodes 416 U.S. 232 (1974), and the later explanatory cases of Wood v. Strickland, 420 U.S. 308 (1975) and O'Connor v. Donaldson, 422 U.S. 563 (1975).

However the problems are approached, it is clear that the claims against the state defendants must be dismissed.

II. The Claims Against the Federal Defendants

The basic problem with the claims against the federal defendants is that in the long period of time that has elapsed since the commencement of this action, there have been substantial changes in the law governing the substantive and procedural aspects of this litigation.

In the procedural aspects of the case, in its rulings of December 11, 1974, March 11, 1976, and April 12, 1976, the Court found that it had jurisdiction pursuant to 5 U.S.C. §702 of the Administrative Procedure Act.[9] However, in 1977 the Supreme Court precluded jurisdiction under §702 over plaintiffs' claims.[10] Somewhat earlier, in Weinberger v. Salfi, 442 U.S. 749 (1975), the Supreme Court held that §205(g) of the Social Security Act provides the exclusive basis for jurisdiction over actions brought for matters arising under the Social Security Act.

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8. 20 C.F.R. 404.1604 and 1606.
9. 5 U.S.C. §§701-706
10. Califano v. Sanders, 430 U.S. 99 (1977).

Under these statutes and decisions, there must first be a hearing and final decision of the Secretary, which may then be appealed to the United States District Court. The plaintiffs have not satisfied these jurisdictional requirements, and for that reason their action must be dismissed.

The substantive claims of the plaintiffs against the federal defendants are based on claimed lack of due process in the appointment of designated payees by the federal defendants. The plaintiffs argue that these appointments were made without giving them either notice or hearing, nor were they given any rights to appeal from the decisions making the appointments.

Whatever the statute may have been when this action was commenced, the record shows clearly and conclusively that the procedures for the appointment of designated payee thereafter were substantially revised.

Section 205(j) of the Social Security Act[11] provides in substance that when it appears to the Secretary that the interest of an applicant entitled to payment would be served thereby, certification of payment may be made for the applicant's use or benefit to a relative or some other person. Certain Social Security Regulations, No. 4[12] and No. 16,[13] and also Part 3 of the Social Security Claim Manual, implement this statute.

Without examining in detail the provisions for notice, hearings, and appeals, some of which became effective November 18, 1975, and some October 1, 1976, it is clear today that at the very least the matter of who shall be named as a designated payee requires full notice and hearing, and is appealable, by proper procedural steps, to the United States Courts.

Originally, a three-judge court of the Northern District of Illinois found, in the case of Tidwell, et al. v. Weinberger, Nos. 73-6-3014 and 74-6-133 (June 23, 1976), that the earlier provisions did not comport with due process. However, upon a later motion by the defendant in these cases to alter or amend the judgment, that Court held that it had examined the revised regulations and found that they comport with due process.

This Court agrees with the conclusions of the Tidwell court. Even if this Court had jurisdiction to determine the issue, it would find that the plaintiffs' substantive claims are without merit, and this action should be dismissed.

THEREFORE, for the reasons stated, good cause therefor appearing, it is

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11. 43 U.S.C. §405(j).
12. 20 C.F.R. §§404.1501-404.1510
13. 20 C.F.R. §§416.607-416.690.

ORDERED that this action be dismissed, and the defendants may go hence without day.

Edwards, Circuit Judge, and Waliski, Judge, concur.

IT IS SO ORDERED.

United States Circuit Judge

United States District Judge

Sr. United States District Judge

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